UNITED
NATIONS

A

General Assembly

Distr.
GENERA

A/50/548
12 October 1995

ORIGINAL: ENGLISH

Fiftieth session
Agenda item 38

THE SITUATION OF DEMOCRACY AND HUMAN RIGHTS IN HAITI

Report of the Secretary-General

I. INTRODUCTION

1. The present report is being submitted to the General Assembly pursuant to paragraph 10 of resolution 49/27 A of 5 December 1994 and paragraph 11 of resolution 49/27 B of 12 July 1995, in which the Assembly requested the Secretary-General to submit to it regular reports on the work of the International Civilian Mission to Haiti (MICIVIH).

2. Following my report of 29 June 1995 (A/49/926), the General Assembly, by its resolution 49/27 B, extended the mandate of the joint participation of the United Nations with the Organization of American States (OAS) in the Mission until 7 February 1996. The Mission was charged with verifying full observance by Haiti of human rights and fundamental freedoms, with a view to making recommendations thereon in order to further the establishment of a climate of freedom and tolerance propitious to the consolidation of long-term constitutional democracy in Haiti and to contribute to the strengthening of democratic institutions.

3. In addition to its headquarters at Port-au-Prince, MICIVIH has 12 regional offices. The number of observers has remained relatively stable, standing in September 1995 at 188 (88 OAS and 100 United Nations, including 27 United Nations Volunteers). Forty-six nationalities are represented, with women slightly outnumbering men.

4. The considerable improvement in the human rights situation described in my report of 29 June 1995 has continued, and the number of human rights violations has remained low. Fundamental freedoms continue to be enjoyed by all sections of society, including by political opponents and critics of the President and the Government and of their policies. Efforts undertaken by the Government of Haiti to improve the justice and penal systems have proceeded apace, as have the

training and deployment of the new Haitian National Police (HNP). Acts of summary "justice" meted out by the population to individuals caught in the act of a crime, though still prevalent, decreased considerably.

5. Nevertheless, there were sporadic reports of ill treatment of detainees and of abuse of power by State agents. The weakness of the judiciary and the often arbitrary nature of decisions and actions continue to be a source of concern in the area of respect for legal and constitutional guarantees.

Targeted killings by unidentified individuals

6. Though most of the current violence in Haiti is of a purely criminal nature and therefore outside the Mission's mandate, MICIVIH continues to investigate killings that may have a political context. Since January 1995 it has examined some 20 killings where the victims appear to have been targeted for assassination and where robbery was apparently not the motive. Five former members of the Haitian Armed Forces (FAdH), three attachés (armed civilians)/ members of the Front révolutionnaire pour l'avancement et le progrès d'Haïti (FRAPH) and several business persons were among the victims. No political figures have been murdered since the assassination of Mireille Durocher-Bertin in March 1995, though the automobile of an electoral candidate was ambushed and his driver shot dead on 19 June. It has not been possible to determine the motives of any of the killings.

Use of excessive force

7. MICIVIH raised several cases with the authorities where it believed that excessive force may have been used by police in law enforcement operations. They included the cases of four suspects killed by agents of the Interim Public Security Force (IPSF). Although it was not possible on the basis of the information available to confirm that excessive force was used, official reports were contradicted by other sources, throwing doubt on the official version that deadly force was necessary.

8. Three individuals were killed by Haitian National Police in July and one in September, and several people suffered bullet wounds when newly deployed HNP officers deliberately or accidentally fired their guns during police operations. The head of HNP informed MICIVIH that investigations were being carried out into certain incidents involving HNP officers; no details of the inquiries are yet known. Several cases of abuse of power by off-duty HNP officers are also under investigation.

Summary "justice"

9. MICIVIH continued to monitor cases of summary "justice" (in which suspected criminals were caught and killed by local people) to the extent that these cases were linked to the administration of justice, to guarantees of the right to life and to a fair trial, and to the principle of presumption of innocence. These killings reached a peak in March when some 50 cases were reported; the number subsequently dropped sharply to less than 10 in August. This decline was attributed in part to increased police action against suspected criminals, more intense patrolling by both the United Nations Mission in Haiti (UNMIH) and

public security forces, and to the deployment of HNP. To a certain extent the creation of brigades de vigilance (vigilante groups), particularly in areas where there is no police presence, may have deterred criminal activity, but in a small number of cases the brigades de vigilance have themselves been accused of involvement in acts of summary "justice". Most of the killings investigated by MICIVIH, however, were the result of spontaneous action by the population. Police and judicial authorities have appeared reluctant to initiate proceedings in cases of summary "justice".

Cruel, inhuman or degrading treatment

10. The widespread and systematic use of torture and other forms of cruel, inhuman or degrading treatment has ceased. Greater effort is being made to bring detainees before a judge within 48 hours of arrest. As of August and since the deployment of the new police force in mid-June, one case of a detainee being beaten by an HNP officer has been reported.

11. MICIVIH has raised with the authorities several alleged cases of ill treatment by IPSF officers, Administration pénitentiaire nationale (APENA) prison guards and HNP, including the cases of two detainees beaten by IPSF officers of the Antigang police station in Port-au-Prince on 25 August, and of a young man beaten by an HNP officer near Gonaïves. In most cases, the authorities stated that an investigation was under way. In one case, a prison guard was suspended pending the outcome of an inquiry.

Rights to freedom of expression and association

12. The rights to freedom of expression and association continue to be widely enjoyed in Haiti. An exception was the legal proceedings initiated in April against a former judge after he had made a derogatory comment about President Aristide and the head of the Mouvement Paysan de Papaye (MPP). The Mission also expressed publicly its concern that no radio station be closed during the election campaign period, after a justice of the peace in Les Cayes ordered the closure of a radio station on 10 June on technical grounds and for alleged subversive intent. The station was subsequently reopened after complying with certain technical requirements.

Arbitrary or illegal arrests and detention

13. MICIVIH investigated a series of arrests and detentions, some with possible political overtones. Irregularities documented include the issuing of arrest warrants without specifying individual charges, delays in bringing detainees before a judge and a lack of judicial oversight. There were several instances in which individuals were arrested following a search without warrant, and where the presence of a justice of the peace was used to justify the lack of a search warrant. Some individuals were detained on the basis of a sole denunciation and with no preliminary inquiry. Prolonged periods of pre-trial detention have also been reported. MICIVIH has raised these concerns with judicial authorities at both the national and local levels.

Right to justice for victims of past human rights abuses

14. Those seeking justice through the courts for past human rights violations still face considerable obstacles, although certain judges have showed more willingness to take action. Inability to locate the accused, the continuing reluctance of some judicial officials to pursue cases and the escape from prison of several of the accused are some of the difficulties reported. None the less, numerous arrest warrants were issued and a number of former FAdH/FRAPH members arrested. Among arrest warrants issued were those against eight people accused of complicity in the massacre of scores of peasants in Jean Rabel in 1987. In September, police arrested a former attaché and FRAPH member allegedly implicated in the 1994 massacre at Raboteau, a suburb of Gonaïves. Two former FAdH members were sentenced, in absentia, for past human rights violations, including the killing of a student in Les Cayes in 1992. In another case, an attaché was sentenced to hard labour for life for his involvement in the assassination in September 1993 of Antoine Izméry, a well-known supporter of President Aristide.

Human rights and the administration of criminal justice

15. There has been a gradual improvement in the administration of criminal justice since the return of the constitutional Government on 15 October 1994, despite the fact that the independence and impartiality of the judiciary were not always evident - particularly in cases with a political complexion. This improvement was attributable primarily to the re-establishment of democratic institutions and the reform efforts undertaken by the Ministry of Justice. The latter included a penal reform programme, the inauguration in July 1995 of the Justice Academy (Ecole de la Magistrature) and initial steps to develop an investigative capacity within the criminal justice system. The efforts of the Government of Haiti to create a professional civilian police force should also be noted in this context.

16. Much remains to be done, however, in the sphere of criminal justice. For instance, preventive detention continues to be the rule rather than the exception. The right to personal freedom is frequently violated because of the failure to respect legal provisions specifying that, except in cases of flagrante delicto, the examining magistrate is the only judicial official authorized to deliver arrest warrants. This, in conjunction with delays in judicial proceedings, means that the majority of detainees in Haiti have not been convicted by a court of law.

17. At the beginning of September there were 1,703 prisoners, 1,504 of whom were awaiting trial; only 199 had been convicted. Among female detainees, the proportion of those awaiting trial was even higher - of a total of 113 detainees, 107 were awaiting trial and only six had been convicted. A considerable number of those awaiting trial have been in prison for several months. According to available information, some detainees have never been presented before a judge; others had not been taken before a judge within the 48-hour period specified in the Constitution. Excessive delays in the administration of criminal justice, as well as extremely poor conditions of detention, have led to riots and other problems within various detention centres.

18. The right to defence for those accused has not always been upheld, most notably for economically disadvantaged people, who form the majority of those facing legal proceedings. Even in cases where the right to legal counsel was respected, such as at jury trials, there were serious inadequacies. Little or no provision for the right to defence was made during the period of pre-trial investigation, during which many of the elements against the accused may be collected. In some cases, defendants alleged that information had been extracted under duress during pre-trial investigation.

19. MICIVIH observed the jury trials held during recent months in a number of towns, to assess whether legal guarantees were being upheld. Progress was made in certain cases of particular interest to both the national and international communities, such as those relating to the above-mentioned killing of Antoine Izméry and the killing of three employees of the Embassy of the United States of America. MICIVIH considers that in most of the cases, criminal proceedings fell short of basic standards for a fair trial.

20. The conduct of pre-trial investigation in criminal cases was impeded by a serious lack of resources. Judicial and police investigators are not trained in methods of scientific inquiry and at times even lack the necessary personnel and logistical resources to visit the scene of the crime. Consequently, the criminal investigation of violent deaths has failed to satisfy international standards and the requirements of Haitian law.

The role of the International Civilian Mission to Haiti in reinforcing the judicial system

21. According to its mandate, MICIVIH is authorized to "assist the judiciary in strengthening the legal means of guaranteeing the exercise of human rights and respect for legal procedures" (A/48/944, annex, para. 10 (c) (xi)). This work comprises two elements: the verification of respect for human rights and technical cooperation for the reform of the judicial system.

22. The activities of MICIVIH in the sphere of technical cooperation for the reinforcement of democratic institutions emerged from discussions with the Haitian authorities. They have included consultation with MICIVIH jurists over the preparation of legal texts, training and assistance in the improvement of the prison system. The Minister of Justice has proposed that MICIVIH representatives act as observers to the Commission responsible for the revision of legal texts, as well as provide advice on the elaboration of a further text regulating the activities of APENA.

23. At the national level, members of the MICIVIH Department of Legal Affairs maintained regular contacts with representatives of the Ministry of Justice, HNP, APENA, the Justice Academy, the Police Academy (Ecole de la Police) and other governmental bodies. At the local level, MICIVIH observers maintained close contact with judicial officials throughout the country and monitored legal proceedings. On the basis of its monitoring activities, MICIVIH will continue to submit recommendations to the Government of Haiti for improvements in the administration of the justice system.

Human rights and the Haitian National Police - the role of the International Civilian Mission to Haiti

24. The Government of Haiti recently adopted a code of conduct to regulate the activities of the new national police force. In view of recent reports of excessive use of force and abuse of power by police officials, MICIVIH proposed its participation in training courses for the national police, particularly with respect to international principles governing the use of force and firearms.

25. Following contacts with the Police Academy, MICIVIH was invited to participate in the training of police cadets. This training began in September and focused on international norms for law enforcement officials. In response to requests by UNMIH civilian police (CIVPOL), MICIVIH also gave a presentation to new police supervisors on the subject of human rights and the police.

The role of the International Civilian Mission to Haiti in prison reform

26. MICIVIH staff held regular discussions with the Government leading to the creation of a national system of prison administration, APENA, on 5 June 1995. MICIVIH has worked with the Government in the formulation of prison regulations in order to ensure their conformity with international standards relating to the treatment of prisoners. In June, MICIVIH cooperated closely with the Ministry of Justice and the United Nations Development Programme (UNDP) in the development of a training programme for prison officials employed by APENA. More than 400 officials attended a two-week training course conducted by French trainers working in consultation with MICIVIH. The Mission continued its training programme for prison officials on international standards and, following investigations which revealed grave deficiencies in the maintenance of prison registers and prisoners' files, provided technical and training assistance in this regard to prison officials throughout the country.

27. MICIVIH continued to monitor the prison administration system, focusing on detainees' human rights and initiatives to improve prison conditions. Its observers from the Penal Reform Unit, along with the Deputy Director General and Technical Director of APENA and a UNDP representative, carried out monthly visits to each of Haiti's 15 prisons. MICIVIH observers at regional offices also visited prisons to assess the treatment of detainees. They documented the legal situation of detainees, including through individual interviews, and noted any irregularities in detention procedures. Where appropriate, observers approached judicial authorities and urged them to remedy such irregularities.

Relations with the National Commission of Truth and Justice

28. MICIVIH continued to cooperate with, and provide technical assistance to, the National Commission of Truth and Justice. It concluded a memorandum of understanding on the transmission of information and general cooperation with the Commission, emphasizing the confidential nature of MICIVIH information and the need to obtain prior permission of the victim or other informant for the transmission of any information requested.

29. Teams of investigators from the Commission were deployed throughout the country from mid-July to the end of August to collect information on past human

rights abuses. MICIVIH transmitted information on a number of serious cases where a request had been received from the Commission and where permission had been granted by the victims or other relevant individuals. MICIVIH also assisted in the identification of possible burial sites of victims and in the preparatory work necessary to facilitate the operations of a team of forensic experts recruited by the Commission.

The role of the International Civilian Mission to Haiti during the elections

30. The United Nations and the OAS agreed that, in connection with elections, MICIVIH would monitor fundamental freedoms such as the right to freedom of expression and assembly, investigate threats or incidents of intimidation, aggression or violence and promote confidence-building.

31. During the election periods, MICIVIH observers maintained close contact with political parties, candidates, members of popular organizations, electoral officials and others involved in the electoral process throughout the country. Observers acted to facilitate constructive dialogue and the resolution of disputes between opposing groups whenever possible, in order to diminish tension and prevent outbreaks of violence.

32. Some 157 MICIVIH human rights observers reinforced the presence of the OAS Election Observation Mission (EOM) in the field on 25 June 1995, the first round of the legislative and local government elections, and approximately 125 during the 17 September run-offs for parliamentary seats. About 87 MICIVIH observers were present during the complementary elections held on 13 August in areas where organizational or other difficulties, notably the absence of voter lists and other essential voting materials, had prevented elections from taking place on 25 June.

33. MICIVIH found that, despite isolated acts of aggression, the June elections were relatively free of political violence, with few incidents resulting in physical injury.

34. During the immediate post-election-day period, there were a number of violent demonstrations that culminated in the ransacking of polling stations and the burning or destruction of completed ballot papers. These demonstrations appeared to be protests against the alleged unfairness of the voting process and other irregularities, but may also have been intended to disrupt the electoral proceedings on behalf of losing candidates.

35. Several candidates or their supporters were arrested in connection with the above-mentioned incidents or for causing disorder on polling day. MICIVIH followed closely the legal and criminal procedures followed in these cases, in particular with regard to the arrest on 28 June of Duly Brutus, a former President of the Chamber of Deputies and candidate of the Parti national progressiste révolutionnaire (PANPRA), and that of Jacques Laguerre, a justice of the peace, on 6 July. Both were provisionally released. Despite these incidents, the vast majority of electors were able to vote without fear of intimidation or violence.

Medical assistance to victims of human rights violations

36. Since its return to Haiti in October 1994, MICIVIH has ensured the provision of medical assistance to some 600 victims of human rights violations committed under the de facto military Government. This has been achieved in collaboration with a national network of medical professionals, created by a MICIVIH initiative in 1993, and, since October 1994, the non-governmental organization Médecins du Monde. Some 60 per cent of the victims whose cases were taken up by MICIVIH had suffered torture, rape and other forms of cruel or degrading treatment.

37. The Medical Unit of MICIVIH continued to compile detailed documentation on the medical consequences of human rights violations, whether physical or psychological in nature, for victims, family members and witnesses. When appropriate, it provided statements certifying that the medical condition of individuals was consistent with their testimony of human rights abuse. In recent months, MICIVIH has given priority to the preparation of medical statements relating to individual cases of human rights violations for submission to the National Commission on Truth and Justice.

38. The Medical Unit undertook a study on the long-term psychological effects of human rights violations on individuals and family members. The Unit worked with local health professionals and non-government organizations towards the creation of a community clinic for the treatment of psychological trauma. Training for the first 50 community therapists began in the middle of September 1995.

Human rights and public education activities

39. Under the guidance of the Human Rights Education Unit, MICIVIH teams have continued to disseminate information material on human rights. During the election campaign, presentations focused on international human rights standards and fundamental criteria for free and fair elections.

40. MICIVIH worked closely in this regard with local human rights and popular organizations, as well as with relevant government ministries, international agencies and international non-governmental organizations.

41. MICIVIH periodically made public its assessment of the human rights situation as well as relevant recommendations through press releases, media interviews and press briefings. In an effort to disseminate its information and the activities of the Mission more widely, the first issue of a monthly newsletter, MICIVIH News, was released in September.

Relations between the International Civilian Mission to Haiti and the Haitian authorities

42. MICIVIH maintains good and productive working relationships with the Haitian authorities at all levels. A sign of the vastly improved relations with the Haitian authorities has been the unprecedented and unrestricted access to detention centres since the Mission's return in October 1994.

43. At the local level, MICIVIH regional coordinators and observers maintain regular contact with local government, police (HNP and IPSF), prison and judicial officials, prosecutors and defence counsels, as well as with elected officials and leaders of grass-roots and other organizations. MICIVIH has been invited by governmental and elected officials on many occasions to attend local meetings to discuss issues affecting the community.

44. MICIVIH teams have been able to use their good relations with local officials and community and other leaders to defuse potentially explosive situations - for example, to facilitate meetings with groups and communities involved in land and other disputes.

45. MICIVIH is in the process of preparing a series of recommendations for submission to the Government. These will include a number of measures intended to prevent human rights violations and to reinforce human rights safeguards. They will focus inter alia on strengthening the criminal justice system, improving the treatment of detainees and the conduct of law enforcement officials, and penal reform. They will also urge the Government to ratify those international human rights and humanitarian treaties to which it is not yet a party and to create an ombudsman institution (Office de la protection du citoyen) as called for by the Constitution of Haiti.

46. In order to facilitate the involvement of Haitian society in the debate on judicial reforms, MICIVIH is considering a proposal for an international conference on human rights and the administration of criminal justice in Haiti, in collaboration with the Centre for Human Rights of the United Nations Secretariat.

Relations between the International Civilian Mission to Haiti and the United Nations Mission in Haiti

47. Relations between MICIVIH and UNMIH continue to proceed smoothly, with frequent consultation, coordination and exchange of information taking place at all levels of both Missions. MICIVIH continued to work closely with CIVPOL in monitoring the conduct of HNP in the area of human rights and in observing the performance of the newly established cadre of correction officers, as well as conditions of detention.

48. UNMIH's administrative component helps meet MICIVIH's requirements by providing a full range of administrative services pertaining to personnel, procurement, finance, transport, communications, logistics, movement control, general services, management information, security, building management and engineering. Additional support was provided at times of increased activity - during the period of electoral observation, for instance. Outposted UNMIH administrative officers provided similar support to MICIVIH elements in their areas of operation, in addition to their functions in support of military and CIVPOL personnel. The Air Operations Section of UNMIH facilitated and provided transportation on scheduled flights for MICIVIH personnel and equipment to all locations within the Mission area.

Observations

49. In my previous report to the General Assembly, I noted that, in agreement with the Secretary-General of OAS, I intended to recommend that the mandate of the United Nations component of MICIVIH be extended by a full year, until 8 July 1996 (A/49/926, para. 34). However, the Government of Haiti asked at that stage that the extension be only until 7 February 1996, the date on which, under the Constitution, the President's mandate expires. Therefore, while recommending an extension of the mandate of MICIVIH until 7 February 1996, I noted that I had indicated to the Government that it would be important that any request for a further extension of the mandate beyond that date be received before the General Assembly considered the item entitled "The situation of democracy and human rights in Haiti" at its fiftieth session.

50. After consultations with the Secretary-General of OAS, who has expressed a readiness for a continued MICIVIH presence in Haiti after 7 February 1996 on the basis of the memorandum of understanding between our two organizations, I intend, upon receipt of a request to that effect from the Government of Haiti, to formulate a recommendation to the General Assembly for an extension of the mandate of MICIVIH.

51. Should the Government of Haiti make such a request, it is recommended that the terms of reference be adjusted to place greater emphasis on technical cooperation with the Government in the area of institution-building, in particular in the judicial and penal fields, and on the promotion and protection of human rights. The size and composition of its staff would be reassessed in consultation with the Secretary-General of OAS to reflect the new emphasis of the Mission's work.